

The issues of notice, timely written claim and whether certain defenses apply are all issues listed in K.S.A. 44-534a as appealable from preliminary hearings. As such, this matter is properly before the Appeals Board upon respondent's appeal.

Claimant alleges injury beginning July 25, 1992, through September 9, 1993, her last day in respondent's employment. Claimant, a cake decorator, developed a sharp pain in her left wrist on July 25, 1992. Claimant's left hand began to swell and she developed pain in her fingers. Claimant alleges she talked to Mr. Steve Payne, the store manager, and requested she be referred to the local emergency room. Respondent denies this allegation, but medical documentation placed into evidence indicates contact was made by the emergency room to the respondent regarding claimant's injuries. The document prepared by St. Joseph's emergency room indicated Albertsons had been contacted on July 30, 1992, but would not authorize the visit under workers compensation so claimant checked in under her personal insurance. As a result of claimant's examination in the emergency room she was provided with a wrist splint which she wore at work for several weeks. The presence of the wrist splints at work was verified by Mary Tornquist, the respondent's bookkeeper and the claimant's friend. Ms. Tornquist also advised that claimant spoke to Mr. Payne on more than one occasion regarding certain bills which were not being paid from the emergency room visits.

Claimant alleged certain documentation was prepared by respondent and signed by claimant shortly after her visit to the emergency room. This documentation has never been located but Ms. Tornquist testified that Mr. Payne greatly disliked paperwork and was not proficient at maintaining paperwork in appropriate files. The medical reports from the emergency room indicating contact with respondent, coupled with the testimony of claimant and the testimony of Ms. Tornquist, convinces the Appeals Board that notice to the respondent was provided within ten (10) days of the date of accident as is required by K.S.A. 44-520.

Respondent further contends written claim under K.S.A. 44-520a was not provided by claimant within two-hundred (200) days of the accident. While K.S.A. 44-520a does require a written claim within two-hundred (200) days of the date of accident or in cases where compensation payments have been made within two-hundred (200) days after the date of the last payment of compensation, it should be noted that K.S.A. 44-557 significantly alters the statute of limitations for written claims should a respondent fail to file an accident report within twenty-eight (28) days after receipt of knowledge of claimant's injury. Having found that appropriate notice was given to the respondent regarding claimant's injury, the Appeals Board also finds written claim was submitted in a timely fashion. Even though the respondent was contacted by the claimant and by the emergency room within ten (10) days of the accident, the accident report in this matter was not prepared until September 12, 1993. This is three (3) days after claimant's termination of employment on September 9, 1993 and fourteen (14) months after claimant's initial onset of problems in July 1992. Respondent's failure to timely file its report of accident within twenty-eight (28) days pursuant to K.S.A. 44-557 extends the statute of limitations to one (1) year from the date of accident, suspension of payment of disability compensation, date of last medical treatment authorized by the employer or the death of such employee. Claimant's date of injury is alleged through September 9, 1993, claimant's last day of employment with respondent. Written claim was submitted by certified letter with a return receipt requested dated September 1, 1994. The certified letter from claimant's attorney was received within one (1) year of claimant's alleged date of accident and is timely.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Nelsonna Potts Barnes dated February 21, 1995, is affirmed and remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of May, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Stephen J. Jones, Wichita, KS
 Vaughn Burkholder, Wichita, KS
 Marvin R. Appling, Wichita, KS
 Nelsonna Potts Barnes, Administrative Law Judge
 George Gomez, Director